

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRELLA AREVALO
Claimant

VS.

IBP, INC.
Self-Insured
Respondent

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Docket No. 168,101

ORDER

Respondent appeals an Order entered by Administrative Law Judge Floyd V. Palmer, dated August 29, 1995. Board Member Gary M. Korte has disqualified himself from participating in this proceeding. Appeals Board Member Pro Tem Jeffrey K. Cooper has been appointed to participate in this discussion pursuant to K.S.A. 44-555(b)i.

ISSUES

- (1) Whether the injury alleged by claimant arose out of and in the course of her employment.
- (2) Whether the Administrative Law Judge exceeded his authority in granting benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It should be initially noted that the respondent on appeal raised an issue of whether or not claimant's injury arose out of and in the course of her employment. After a complete review of the file, it appears that this issue was never raised at the preliminary hearing and raising it for the first time before the Appeals Board is tantamount to misrepresentation of the issues to the Board. It is clear from the preliminary hearing that the only issue involved was whether or not temporary total benefits should continue during the period of schooling beyond the 72 weeks provided for re-education at the expense of the employer under K.S.A. 44-510g(e)(3). Based on a complete lack of evidence on the issue and the obvious agreement of the parties as to the compensability of the claim at the time the vocational plan was entered into, the Board finds that the issue is not properly before the Board and the respondent's appeal on this issue is dismissed.

With regard to the second issue, the Order of Administrative Law Judge Floyd V. Palmer dated August 29, 1995 was from a preliminary hearing and covers preliminary hearing issues. K.S.A. 44-534a grants appeals from preliminary hearings when dealing with disputed issues involving whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice was given or claim timely made, or whether certain defenses apply. As the issue regarding payment of temporary total during periods of vocational rehabilitation is clearly within the power of the Administrative Law Judge pursuant to K.S.A. 44-510g(g) and is not listed as

an appealable issue from preliminary hearing, the Appeals Board lacks jurisdiction to review the same and the Administrative Law Judge's findings will not be disturbed.

Wherefore, it is the finding, decision and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated August 29, 1995 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c:

James C. Wright, Topeka, Kansas
Stephen A. McManus, Kansas City, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director